

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1167 be amended to read as follows:

- 1 Page 5, line 3, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".
- 2 Page 5, line 41, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".
- 3 Page 7, line 32, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".
- 4 Page 8, line 4 delete "34-6-2-52);" and insert "**34-6-2-52(b));**".
- 5 Page 8, line 10, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".
- 6 Page 8, line 17, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".
- 7 Page 8, between lines 38 and 39, begin a new paragraph and insert:
- 8 "SECTION 4. IC 34-6-2-11.5 IS ADDED TO THE INDIANA
- 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2009]: **Sec. 11.5. "Asbestos claim", for**
- 11 **purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-1.**
- 12 SECTION 5. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE
- 13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 14 1, 2009]: **Sec. 29.5 "Corporation", for purposes of IC 34-31-8, has**
- 15 **the meaning set forth in IC 34-31-8-2."**
- 16 Page 8, line 40, after "52." insert "**(a)**".
- 17 Page 8, line 41, delete "IC 34-20-3-2 and".
- 18 Page 9, between lines 9 and 10, begin a new paragraph and insert:
- 19 "**(b) "Hazardous substance", for purposes of IC 34-20-3-2,**
- 20 **means a material or waste that has been determined to be**
- 21 **hazardous or potentially hazardous to any individual, to property,**
- 22 **or to the environment by the United States Environmental**
- 23 **Protection Agency, the federal Nuclear Regulatory Commission,**
- 24 **the United States Department of Transportation, the solid waste**

1 **management board, or the United States Occupational Safety and**
 2 **Health Agency or any agent or designee of any of the above**
 3 **mentioned boards, agencies, or commission.**

4 SECTION 7. IC 34-6-2-71 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 71. (a) "Insurer", for
 6 purposes of IC 34-18, has the meaning set forth in IC 34-18-2-17.

7 (b) "Insurer", for purposes of IC 34-53, has the meaning set forth in
 8 IC 27-1-2-3.

9 **(c) "Insurer", for purposes of IC 34-31-8, has the meaning set**
 10 **forth in IC 34-31-8-3.5**

11 SECTION 8. IC 34-6-2-142.5 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2009]: **Sec. 142.5. "Successor asbestos related**
 14 **liability", for purposes of IC 34-31-8, has the meaning set forth in**
 15 **IC 34-31-8-4.**

16 SECTION 9. IC 34-6-2-143.8 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2009]: **Sec. 143.8. "Transferor corporation",**
 19 **for purposes of IC 34-31-8, has the meaning set forth in**
 20 **IC 34-31-8-5."**

21 Page 9, line 11, after "(a)" insert **"Except as provided in subsection**
 22 **(d),"**.

23 Page 9, line 12, delete "on" and insert "on:".

24 Page 9, line 13, reset in roman "(1) property damage resulting
 25 from".

26 Page 9, line 13, after "asbestos;" insert **"a hazardous substance (as**
 27 **defined in IC 34-6-2-52(b));"**.

28 Page 9, line 13, reset in roman "or".

29 Page 9, line 14, reset in roman "(2)".

30 Page 9, line 15, after "substance" insert **"(as defined in**
 31 **IC 34-6-2-52(b));"**.

32 Page 9, line 16, before "must" insert **"occurring within ten (10)**
 33 **years after the delivery of the product to the initial user or**
 34 **consumer,"**.

35 Page 9, line 20, after "substance" insert **"(as defined in**
 36 **IC 34-6-2-52(b))"**.

37 Page 9, delete lines 24 through 32 and insert:

38 "(c) A product liability action for property damage accrues on the
 39 date when the injured person knows that the property damage has
 40 resulted from ~~asbestos~~: **a hazardous substance (as defined in**
 41 **IC 34-6-2-52(b)).**

42 (d) ~~This section applies only to A product liability actions action~~
 43 ~~against~~

44 ~~(1) persons who mined and sold commercial asbestos; and~~

45 ~~(2) funds that have, as a result of bankruptcy proceedings or to~~
 46 ~~avoid bankruptcy proceedings, been created for the payment of~~

~~asbestos~~ hazardous substance (as defined in IC 34-6-2-52(b)) related disease claims or ~~asbestos~~ hazardous substance (as defined in IC 34-6-2-52(b)) related property damage claims, must be commenced within two (2) years after the cause of action accrues, and claims against these funds are not subject to the ten (10) year period as described in subsection (a).

(e) This section applies to all product liability actions that are based on property damages or personal injury, disability, disease or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that accrue before, on, or after July 1, 2009.

(f) A product liability action that is based on property damage or personal injury, disability, disease, or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that was barred on July 1, 2009, by a period of limitations or repose that was in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary."

Page 9, line 38, delete "(d)" and insert "(g)".

Page 9, line 42, delete "(e)" and insert "(h)".

Page 10, after line 5 begin a new paragraph and insert:

"SECTION 11. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnifications, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

(C) parent;

(D) child; or

(E) other relative;

of a person exposed to asbestos; and

(3) a claim for damage or loss caused by the:

(A) installation;

1 (B) presence; or

2 (C) removal of asbestos.

3 Sec. 2. As used in this chapter, "corporation" means a
4 corporation for profit, including a domestic corporation organized
5 under Indiana law or a foreign corporation organized under the
6 law of a jurisdiction other than Indiana.

7 Sec. 3. As used in this chapter, "insurer" means a company,
8 firm, partnership, association, order, society, or system making any
9 kind or kinds of insurance and shall include associations operating
10 as Lloyds, reciprocal or interinsurers, or individual underwriters.

11 Sec. 4. As used in this chapter, "successor corporation" means
12 a corporation that:

13 (1) assumes;

14 (2) incurs;

15 (3) has assumed; or

16 (4) has incurred;

17 successor asbestos related liability.

18 Sec. 5. As used in this chapter, "successor asbestos related
19 liability" means any liability that is related to an asbestos claim
20 that was assumed or incurred by a corporation as a result of:

21 (1) a merger or consolidation with another corporation;

22 (2) the plan of merger or consolidation related to the merger
23 or consolidation; or

24 (3) the exercise of control or the ownership of stock of the
25 corporation before the merger or consolidation.

26 Sec. 6. As used in this chapter, "transferor corporation" means
27 a corporation from which a successor asbestos related liability was
28 assumed or incurred.

29 Sec. 7. (a) Subject to subsections (c) and (d) and sections 10 and
30 12 of this chapter, the cumulative successor asbestos related
31 liabilities of a successor corporation are limited to the fair market
32 value of the total gross assets of the transferor corporation,
33 determined as of the time of the merger or consolidation through
34 which the successor corporation assumed or incurred successor
35 asbestos related liability.

36 (b) A successor corporation is not responsible for successor
37 asbestos related liability in excess of the limitation set forth in
38 subsection (a).

39 (c) For purposes of this section, if a transferor corporation
40 assumed or incurred successor asbestos related liability in
41 connection with a merger or consolidation with a prior transferor
42 corporation, the fair market value of the total gross assets of the
43 prior transferor corporation determined as of the time of the
44 earlier merger or consolidation shall be substituted for the
45 limitation set forth in subsection (a) to determine the limitation of
46 liability of the successor corporation.

47 (d) Cumulative successor asbestos related liabilities include

1 liabilities that exist after the merger or consolidation of the
 2 successor corporation and the transferor corporation and that are
 3 paid or discharged by or on behalf of the:

- 4 (1) successor corporation; or
- 5 (2) transferor corporation;

6 as part of a settlement or judgment in Indiana or another
 7 jurisdiction.

8 **Sec. 8.** The limitations set forth in section 7 of this chapter apply
 9 to a corporation that is a successor corporation and became a
 10 successor corporation before January 1, 1972, or is a successor of
 11 that corporation's successors.

12 **Sec. 9.** The limitations set forth in section 7 of this chapter do
 13 not apply to:

- 14 (1) worker's compensation benefits paid by or on behalf of an
- 15 employer to an employee under IC 22-3 or a comparable
- 16 worker's compensation law in another jurisdiction;
- 17 (2) a claim against a corporation that is not a successor
- 18 asbestos related liability;
- 19 (3) any obligation under the federal National Labor Relations
- 20 Act (29 U.S.C. 151, et seq.);
- 21 (4) a collective bargaining agreement;
- 22 (5) an insurer as defined in section 3 of this chapter.
- 23 (6) a successor corporation that after a merger or
- 24 consolidation continued in the business of:
 - 25 (A) mining asbestos;
 - 26 (B) selling or distributing asbestos fibers;
 - 27 (C) manufacturing, distributing, removing, or installing
 - 28 asbestos containing products;
 - 29 that were the same or substantially the same as those products
 - 30 previously manufactured, distributed, removed, or installed
 - 31 by the transferor corporation.

32 **Sec. 10.** A successor corporation may establish the fair market
 33 value of the total gross assets, including intangible assets, of a
 34 transferor corporation to determine limitations under section 7 of
 35 this chapter by any reasonable method, including:

- 36 (1) by reference to the going concern value of the assets;
- 37 (2) by reference to the purchase price attributable to or paid
- 38 for assets in an arms length transaction; or
- 39 (3) in the absence of other readily available information from
- 40 which the fair market value can be determined, by reference
- 41 to the value of the assets recorded on a balance sheet.

42 **Sec. 11. (a)** If the total gross assets of a transferor corporation
 43 include liability insurance issued to the transferor corporation, this
 44 chapter does not affect the applicability, terms, conditions, or
 45 limits of the liability insurance.

46 **(b)** This chapter does not affect the rights and obligations of an
 47 insurer, transferor, or successor under an insurance contract or

1 any related agreements, including:

2 (1) preenactment settlements resolving coverage related
3 disputes; or

4 (2) contracts regarding the rights of an insurer to seek
5 payment for applicable deductibles, retrospective premiums,
6 self insured periods, or periods as to which insurance is
7 uncollectible or unavailable.

8 (c) A settlement of a dispute concerning liability insurance
9 coverage entered into by a:

10 (1) transferor corporation; or

11 (2) successor corporation;

12 with the insurers of a transferor corporation before July 1, 2009,
13 is determinative of the total coverage of liability insurance to be
14 included in the calculation of a transferor corporation's total gross
15 assets under this chapter.

16 Sec. 12. (a) Except as provided in subsections (b) through (d),
17 the sum determined as the fair market value of the total gross
18 assets of a transferor corporation as of the time of a merger or
19 consolidation for purposes of determining the limit on the
20 cumulative successor asbestos related liabilities of a successor
21 corporation under this chapter shall be adjusted annually at a rate
22 equal to the sum of the following:

23 (1) The prime rate listed in the first edition of the Wall Street
24 Journal published for each calendar year since the merger or
25 consolidation. If the prime rate is not published in the first
26 edition of the Wall Street Journal, then a reasonable
27 determination of the prime rate on the first day of the year
28 may be used.

29 (2) One percent (1%).

30 (b) The rate described in subsection (a) may not be
31 compounded.

32 (c) The adjustment of the fair market value of the total gross
33 assets of the transferor corporation as of the time of the merger or
34 consolidation shall continue as described in subsection (a) until the
35 date as of which the adjusted value is first exceeded by the
36 cumulative amounts of successor asbestos related liabilities paid or
37 committed to be paid by or on behalf of:

38 (1) the successor corporation;

39 (2) any predecessor corporation; and

40 (3) the transferor corporation;

41 after the time of the merger or consolidation.

42 (d) No adjustment of the fair market value of total gross assets

1 **of a transferor corporation under this section shall be applied to**
2 **any liability insurance."**

3 Renumber all SECTIONS consecutively.
 (Reference is to HB 1167 as printed January 27, 2009.)

Representative Van Haaften